



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of D.F., Department of  
Health

CSC Docket No. 2021-1690

Request for Reconsideration

ISSUED: SEPTEMBER 7, 2021 (SLK)

D.F., an Agency Services Representative 3 with the Department of Health (DOH), requests reconsideration of *In the Matter of D.F.* (CSC, decided March 24, 2021) which denied her appeal of the determination of the Chief of Staff, which was unable to substantiate her allegation that she was subject to discrimination or retaliated against in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

In her request, D.F. presents that after the prior decision, she was able to locate and obtain additional information regarding PEOSH inspections that had taken place at the historic DOH building when the building was in full operation. She indicates that three inspection detail printouts are enclosed that state advance notice was given to the employer prior to each PEOSH inspection. She also highlights in her attachments each adverse action that was taken against her to show that alleged discrimination took place. D.F. also submits additional e-mails that were not submitted with the original appeal that she indicates got misplaced.

D.F. states that she filed complaints because of poor working conditions at the historic building and to address many health hazards and safety issues. She notes that she did participate in three complaints that she filed with PEOSH because that was her right. D.F. claims that employees were getting sick, bitten by bugs, could not breathe, felt dizzy, had headaches and had to go outside for air. She indicates that the historic building is now vacant and being demolished.

D.F. presents the State form for filing a PEOSH complaint because she observed in the mailroom water on the floor, falling debris, rusty pipes, and crates on the floor so that the mail would not get wet and communications that she had in August 2017 where her union representative advised that it would be illegal for her to be retaliated against for filing a PEOSH complaint. She states that on September 28, 2017, her union representative emailed her a complaint form for the Health and Safety Team, which is N.S., a Research Scientist 1, and R.E., an Occupational Health Consultant 2, so that she could inform them what she observed in the mailroom. On that same day, N.S. emailed her complaint form to R.F., an Engineer in Charge Maintenance 2 from Treasury, and copied K.J., a Supervising Management Improvement Specialist who works in facilities management and human resources, and R.E. D.F. asserts that on September 29, 2017, R.F. and R.E. approached her in a hostile manner demanding that she show them the issues. She responded that she preferred her union be present during the walkthrough. D.F. indicates that she reported that incident on October 5, 2017, to T.E., a Personnel Assistant 1 in Human Resources and R.F. apologized to her on October 19, 2017. Further, T.D., a Program Specialist 4 asked if she was okay. Thereafter, it was not until May 18, 2018, that T.E. responded indicating that there were no findings regarding her complaint.

D.F. states that on September 27, 2017, R.E. emailed her a blank State form for PEOSH and copied N.S., K.J., and R.F. She notes that the first inspection was performed on November 3, 2017. D.F. asserts that the first adverse action she received was a post-it placed on the trunk of her vehicle on November 16, 2017, with a phone number and "HR Director" written on it. She states that V.A.'s, a member of the Senior Executive Service, October 12, 2018 e-mail states that she did show him the note. D.F. presents her December 12, 2017, e-mail where she disagreed with management's decision of not wanting to perform mold testing in the historic building when it was in full operation.

D.F. believes that the second adverse action against her was when she was transferred out of the Record Modification Unit. She submits a January 16 to 18, 2018, medical note indicating that she was sick with a sinus infection. Thereafter, on January 25, 2018, T.D. issued her a written warning. D.F. presents that her primary doctor indicated that she was sick with a sinus infection from February 8 to February 27, 2018, and she came back to work on February 28, 2018. Subsequently, T.D. emailed her to bring any modification stamps that she has and then she was transferred to a different unit with no return date. She also submits a November 28, 2018, note from her primary doctor stating that she had multiple sinus infections in 2018. Further, she submits nine letters from customers that she helped while working in the Record Modification Unit. Also, she encloses letters from two different local registrar's who she had processed amendments for throughout the years while working in the Records Modification Unit.

D.F. presents her first Americans with Disabilities Act (ADA) accommodation request, which she contends was her third adverse action. She indicates that on April 4, 2018, she requested an accommodation for an air purifier by her workstation. D.F. had attached a February 26, 2018, note to her request from an allergist indicating that even if she was not allergic, mold can make anyone sick and it would be beneficial for employees exposed to mold to have access to an air purifier by their workplace and to eradicate mold by a professional. She submits a June 27, 2018, letter that denied her ADA accommodation request for an air purifier that was issued by C.C., a Manager 1, Human Resources and who sits on the ADA Board with N.S. She notes that N.S. works in facilities management with K.J. D.F. highlights that on December 14, 2017, K.J. granted a co-worker permission to bring in a small humidifier for her bloody nose due to dryness of the air in the building, even though she asserts that this co-worker did not fill-out any forms or provide any documentation to support the accommodation.

D.F. indicates that the fourth adverse action taken against her was a May 3, 2018, Fitness for Duty Confirmation Letter that was copied to T.E. where she was to see a doctor on July 24, 2018. However, on May 8, 2018, she received a notice that the appointment was cancelled. She states that on May 8, 2018, the day prior to a fitness for duty evaluation with B.E., a former Psychological Intern, K.J. informed her that she was not going to be provided an air purifier. K.J. copied N.S. and D.B., Director of Employee Relations on his denial letter. D.F. notes that D.B. was the person who had facilities management pull the video footage regarding the post-it note that was placed on her vehicle and asserts that she played a role in sending her to a fitness for duty evaluation along with M.F., Senior Executive Service. She states that on May 9, 2018, she was sent a letter for a fitness for duty evaluation to be performed by B.E. on May 14, 2018. She reiterates the June 27, 2018, ADA denial letter and notes that it was on the same day she dropped off a letter to the Governor's Office about the poor working conditions in the old DOH building and the discrimination and retaliation she received for filing PEOSH complaints.

D.F. presents that the second inspection of the building took place on August 15, 2018. She encloses a January 22, 2019, e-mail from K.B., a Research Scientist 1, who submitted a summary of the inspection dates of the building. She also submits a January 28, 2019, e-mail from V.A. asking facilities management if she could bring in a small humidifier to be placed on her desk. In response to V.A. on January 30, 2019, K.J. stated that he was not in position to grant the request and that she could pursue her request through the ADA Board as per L.S.'s, a Manager 2 Human Resources, May 1, 2018 e-mail. D.F. indicates that she filed a discrimination complaint with the Department of Labor and Workforce Development (Labor), which did not find discrimination as further documentation was required. She states that Labor did not have the attached inspection details because she only recently had them in her possession. She claims that the inspection details support that she was subject to adverse actions due to her PEOSH complaints. D.F. reached out to T.L., a Chief,

Office of Public Safety on January 29, 2019, asking if the matter could be re-opened and he responded that the complaint was closed and any new documentation could be presented at a hearing at the Office of Administrative Law (OAL) and it was her right to request a hearing a OAL.

D.F. states that her second ADA accommodation request was her fifth adverse action. K.B.'s February 1, 2019 e-mail states that PEOSH enforces State indoor air quality standards and that if symptoms are triggered by the workplace environment, such as an allergen, the employer is required to make a reasonable accommodation under the ADA. She indicates that on February 5, 2019, she requested an air purifier for her desk along with wearing a mask for chronic/rhinitis/sinusitis. D.F. notes that she submitted three different medical professionals' notes stating that it is required for her to have an air purifier at work. However, in its March 22, 2019 e-mail, the ADA Board denied her request for an air purifier, but granted her request to wear a mask, which she was required to purchase. She then asked C.C. if she could bring her own air purifier, but the request was denied.

D.F. asserts that her sixth adverse action involved a bed bug seminar incident. In K.J.'s March 4, 2019 memorandum, he invited employees to a bed bug seminar. In V.A.'s March 7, 2019 e-mail, he informed her that the bugs taken to the seminar were returned to him by K.J. and then returned to her. She says employees were being bitten every day. Also on March 7, 2019, K.J. asked her if she had a gun. Her co-worker's March 14, 2019 -email confirms that she overheard K.J. use the word gun while discussing bed bugs in the building. Thereafter, a May 14, 2019 workplace complaint determined that K.J.'s comment was inappropriate. D.F. states that on May 2, 2019, she requested a meeting with S.E., a former Commissioner, to address the health problems caused by the building. However, the Office of the Commissioner advised that it could not accommodate her request due to the pending matter at OAL and her concerns should be directed to C.G., Deputy Attorney General. On October 16, 2019, C.G. e-mailed her indicating she was looking into her air purifier request and asked what else she was seeking to resolve the matter. D.F. responded that she wanted compensation for her health and mental anguish for what she had been put through. She also indicated that she wanted early retirement with 25 years of service credit plus one day, full pension, and medical with compensation because of her fear of her safety and the uncomfortable feeling when report to work. On October 25, 2019, C.G. reached out to the Administrative Law Judge (ALJ) claiming that D.F. requested to withdraw her petition. The ALJ told D.F. that she was not going to help her and that she should bring her own air purifier. Then, she indicates some things were put on the record and some things were not. She believes that the Office of the Attorney General, the Governor and the Legislature should be informed about the OAL hearings. She notes that K.J. was at the hearing. On October 25, 2019, the ALJ's assistant indicated that no written documentation would be issued, the hearing was put on the record and then closed. She states that she came too far to withdraw her discrimination complaints because she had the right to file PEOSH complaints.

On November 21, 2019, she requested another meeting with the Commissioner regarding poor working conditions, health hazards, and safety issues regarding the building, but she received no reply. D.F. presents that the building was inspected for a third time on February 12, 2020, and PEOSH passed the indoor air quality at the now vacant building on the same day. She indicates that in March 2020, the offices were closed for the Covid-19 pandemic, employees were working remotely, and there have been no adverse actions since that point. Finally, D.F. submits an e-mail from M.B., Building Management Services Specialist 2 confirming a conversation that he had with her in February 2018 requesting video in the parking lot from November 16, 2017, and that the video no longer existed.

In response, the Office of Diversity and Equity Services (ODES) states that D.F. is alleging that following her complaint of the building, on November 16, 2017, a sticky note with "HR Director" and a phone number written on the note was placed on the trunk of her car 13 days after the inspection. ODES asserts that D.F.'s documentation demonstrates that PEOSH and the appointing authority were responsive to her numerous complaints regarding air quality. In her request for reconsideration, it indicates that D.F.'s new evidence is a July 27, 2018, letter to the Governor, incomplete e-mail chains, e-mails requesting meetings with the Commissioner, and it argues that these new submissions provide no evidentiary value that would overturn the prior decision. Additionally, D.F. submits on reconsideration, her communication with C.G. regarding negotiations concerning her hearing at OAL, including her request to be compensated, and how the ALJ's assistant indicated that D.F.'s withdrawal would be placed on the record and there would be no written documentation. She also attached communication indicating that video footage of the parking lot regarding the sticky note incident was no longer retained.

ODES asserts that D.F.'s documentation demonstrates how responsive PEOSH was to her air quality complaints. It states that once the ALJ explained that she could not receive compensation through a hearing at the OAL, D.F. indicated that she wanted to withdraw her complaint and she was sworn in and did so on the record. Concerning the parking lot video that has not been retained, it had previously been reviewed and was shown to have no evidentiary value. As such, the ODES argues that D.F. has not submitted any new documentation that would warrant the matter being reconsidered.

Additionally, the ODES presents that D.F. alleged that she was transferred out of her unit indefinitely while a co-worker was only transferred for a six-months "cool down" period. However, it indicates that D.F. was transferred for the legitimate business reason that she was falling behind in her work and the reassignment did not impact her salary. The ODES asserts that the letters of appreciation that D.F. submits from customers are not evidence that she was not falling behind in her work.

Concerning the fitness for duty evaluations, she was sent because she made repeated complaints about environmental issues dating back to 2015 and information presented in the original appeal noted that the evaluation was due to legitimate business reasons. The ODES notes that while D.F. was deemed fit for duty, there were psychological observations identified by the doctor that could contribute to continual complaints of asbestos and mold in the air “despite apparent contradictory evidence” that air quality was within normal parameters.

The ODES asserts that D.F. has provided no new evidence regarding the bed bug incident and it was already found that K.J.’s questions were considered inappropriate and dealt with via appropriate administrative action as the issue did not touch the State Policy. Regarding the air purifier ADA accommodation request, the ODES states that D.F. provided no new evidence. It indicates that air quality tests provided by PESOH, the appointing authority, and privately funded by D.F. indicate that the air quality was within normal range. Further, the industrial hygienist documented that personal air filters or purifiers would not be effective in the large, open space in the office. However, she was granted her request to wear a mask. It reiterates its arguments that D.F. has not provided any new evidence to warrant the prior decision being reconsidered.

In reply, D.F. states that she never thought she would be treated so poorly because of this. She attaches additional e-mail chains to demonstrate that she was not in the wrong and she was exercising her right to address the safety and health hazards in her work environment. D.F. indicates that she had a phone conversation with T.L. where she stated that the building either needed to be fixed or shutdown and T.L. agreed. While she does not take credit for a new building being built, she notes that ground was broken six months later for a new building, which was the right thing to do because people were suffering.

D.F. states that in ODES’ response it indicated that K.J. was not a member of the ADA Committee and does not have the authority to approve an ADA reasonable accommodation request. She presents that K.J. stated that over the last several years, that there had been a crackdown on the identified use of electronic devices and heaters during their inspections at the old now vacant DOH building. Further, it has been stated that K.J. was out of his purview and violated regulation for granting a co-worker the use of a small personal humidifier at her desk on December 14, 2017, for her bloody nose due to the dryness of the air on the work environment. She notes that the co-worker was not instructed to go through the ADA Committee, nor was she instructed to provide medical documentation; yet K.J. granted this request. However, D.F. highlights that she had to have her request go through the ADA Committee and provide multiple medical documents stating that she needed a humidifier/air purifier at her workstation due to her medical disability. She claims that K.J. was out of his purview for denying her an air purifier on May 14, 2018, and copied N.S. who sits on the ADA Committee and D.B., from Employee Relations in his reply. D.B. is the one

who sent her for a Fitness for Duty Evaluation on May 14, 2018. She emphasizes her contention that K.J. was out of his purview on January 30, 2019, when he continued to copy N.S. She reiterates that she was twice denied the use of an air purifier/humidifier and twice by the ADA Committee and these denials took place after she filed her PEOSH complaints regarding the conditions of DOH building. D.F. also notes that when a company came into the old DOH building drilling into the asbestos floor tiles throughout the entire building during work hours, there was no memo or notification sent to employee. She claims that this type of work should have never been done when employees were in the building and she attaches a November 21, 2019, memorandum from Treasury to the company indicating that it was unaware that the company began work and that it should cease from working until notice is provided to employees and that such work should take place after hours.

D.F. also presents that the DOH building turns her arms red and blotchy, but when she leaves the building it disappears. She believes that there is some sort of irritant contact dermatitis that is irritating her skin and sinuses causing inflammation internally and externally, which is causing her white cells to become elevated and explains the non-stop sinus infections that she gets. D.F. states that an employee from the same building but on a different floor told her that she feels dizzy and sleepy and has breathing issue because of the inconsistency with the temperature in the building. She contends that there are many employees in the building who have issues, but will not say anything. Instead, they go outside to get fresh air or go in the cars to eat lunch or sleep. D.F. submits an e-mail that she sent to T.L. indicating that she is sensitive to lodopropynyl butylcarbamate per an allergy test she received from an allergist. She has asked for information on all paints, primers, adhesives and pesticides that were used at the building from 2001 through 2017 and she is still waiting for documents from Facility Management/Department of Treasury.

The ODES replies that it addressed these issues in the original appeal and has no further response.

## CONCLUSION

*N.J.A.C.* 4A:2-1.6(a) provides within 45 days of receipt of a decision, a party to the appeal may petition the Civil Service Commission for reconsideration.

*N.J.A.C.* 4A:2-1.6(b) provides that a petition for reconsideration shall be in writing signed by the petitioner or his or her representative and must show the following:

1. The new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or

2. That a clear material error has occurred.

*N.J.A.C.* 4A:7.3-2(m)4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

In this matter, D.F. has not met the standard for reconsideration as the new evidence that she presents regarding the PESOH inspections, additional e-mail chains, and other evidence were all available prior to the original proceeding and should have been presented at that time. Further, D.F. has not presented anything that indicates that the Commission made a clear material error in the original proceeding. Moreover, even if the “new” evidence had been presented with the original appeal, it would not have changed the outcome.

Concerning the alleged adverse actions against D.F., there has been no evidence presented that a “sticky note” was placed on her car in retaliation for her PEOSH complaints. Further, the record indicates that she was reassigned out of the Records Modification Unit due to legitimate business reasons that she was falling behind in her work and the reassignment did not impact her salary. It is noted that reassignments are at the discretion of management as long as it not part of a disciplinary action. *See N.J.A.C.* 4A:4-7.2 and *N.J.S.A.* 11A:4-16 and *N.J.A.C.* 4A:4-7.7. Referring to the April 4, 2018, and March 22, 2019, denials to have an air purifier at her workstation and K.J.’s grant to a co-worker the right to use a humidifier, it is noted that K.J.’s granting of the co-worker’s request was in December 2017, which is prior to D.F.’s request. The record indicates that the Industrial Hygienist determined that air purifiers would not be effective and there was concern about the power load with such devices. Therefore, K.J. was no longer informally authorizing such requests and subsequently referred such requests to ADA Committee. Further, for the same reasons, the ADA Committee denied her requests. Concerning the Fitness for Duty Letter, the record indicated that K.J. was not involved and it was requested based on her poor work performance and her continued complaints about air quality when the reports indicated that the air quality was within normal parameters. It is noted that even if D.F. believes that the fact that a new building was built validates her complaint, the evidence indicates that the decision to send her for a Fitness for Duty was based on perceived irrational behavior based on the repeated air quality reports indicating that the air quality was normal, as well as work performance issues, and there is no evidence that this action was taken in retaliation for any of her complaints. Regarding K.J.’s statement that involved a bed bug seminar incident, the record indicates that K.J.’s statement was found inappropriate, but there was no evidence that his statement was based on her membership in a protected class and, therefore, there is no evidence that the statement was made in violation of the State Policy.

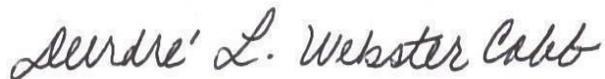
In summary, the mere fact that certain events happened after D.F. filed PEOSH complaints is not evidence that K.J., or anyone else, took actions that were in retaliation for her filing these complaints, without confirming evidence. Mere speculation, without evidence, is insufficient to substantiate a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016).

**ORDER**

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>ST</sup> DAY OF SEPTEMBER, 2021



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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: D.F.  
Frank Maimone  
Division of EEO/AA  
Records Center